

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 80 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MANKUNVERBA W/O DURGAPRASAD

Versus

MOHNASING DAMODAR SOLANKI

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Appearance:

MR VJ DESAI for Petitioner

Ms KUSUM SHAH for MR JV DESAI for Respondent No. 1

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 16/10/97

ORAL JUDGEMENT

1. This is a landlady's revision application u/s. 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'the Rent Act') against the judgment and order dated 29/7/1990 rendered by the learned Assistant Judge, Bharuch in Regular Civil Appeal No. 109 of 1979.

2. The facts may briefly be stated : The petitioner landlady, hereinafter referred to as 'the plaintiff', filed Regular Civil Suit No. 480 of 1975 in the Court of the Joint Civil Judge (J.D.) at Bharuch for obtaining possession of the suit premises on the ground that the defendant (respondent herein) fell in arrears of rent for more than six months, that the rent of Rs.11/- per month plus sanitary charges was the standard rent and that the defendant having not tendered the rent when called upon to do so by suit notice has rendered himself liable to vacate the suit premises. Originally she had an occasion to file Regular Civil Suit No. 405 of 1972 as the rent at the rate of Rs.6.75 paise per month fell in arrears. The defendant filed Rent Petition No. 7 of 1971 for fixation of standard rent contending that the standard rent of the suit premises should be fixed at Rs.4/- p.m. That petition was dismissed for want of prosecution and the suit between the parties herein, namely C.S. No. 405 of 1972 was compromised on 24/2/1975. As per the said compromise defendant agreed to pay Rs.192/- towards arrears of rent of the suit premises and the standard rent was fixed at Rs.11/- p.m. Defendant deposited Rs.170/- in Rent Petition No. 7 of 1971 and Rs.108/- in Suit No. 405 of 1972 and the said amount of Rs.278/- was to be withdrawn by the plaintiff from the Court and after adjusting the said amount towards the rent amount, the defendant agreed to pay arrears of rent and the cost of the suit. It has been the case of the plaintiff that the defendant avoided payment of the amount due from 1/9/1972 to 28/2/1975 at the rate of Rs.6.75 paise per month as rent and Rs.47/- towards the amount of arrears of rent from 1/3/1975 to 30/6/1975 at the rate of Rs.11.75 ps. as rent as per the compromise. The plaintiff claimed cost of the previous suit and mesne profits and after giving credit for the deposited amount of Rs.278/- as stated above, the plaintiff was entitled to Rs.253.19 paise. The plaintiff accordingly gave notice dated 27/6/1975 demanding the arrears of rent and mesne profits and possession of the suit premises with effect from 31/7/1975.

3. The defendant resisted the suit as per written statement exh. 32 contending inter-alia that the plaintiff wanted to obtain possession of the suit premises at any cost and she accordingly refused to accept amount of rent offered or tendered by him. He disputed standard rent contending that it should be fixed at Rs.4/- p.m. and that as per his account no amount was due towards the rent and the suit should be dismissed with cost. He has contended that he has deposited Rs.294/- as detailed in written statement para. 8 and if

the said amount is adjusted towards the arrears of rent, nothing would remain due and payable by the plaintiff.

4. On the aforesaid pleadings the issues were framed at exh. 20 and one of the issues was with regard to the standard rent of the suit premises. It might also be noted that no issue was framed with regard to res-judicata on the question of fixation of rent. The learned trial Judge (Joint Civil Judge (J.D.) Bharuch) by his judgment and decree dated 20/8/1979 decreed the plaintiff's suit both for possession as well as arrears of rent as claimed by the plaintiff, while also fixing standard rent at the rate of Rs.11/- p.m. and directing payment of mesne profits at that rate till up to the delivery of possession of the suit premises. The defendant carried the matter in appeal bearing Regular Civil Suit No. 109 of 1979. As stated above, the learned Assistant Judge while fixing the standard rent of the suit premises at Rs.11/- p.m. exclusive of sanitary charges, dismissed the plaintiff's suit for possession finding that Rs.199.75 remained due and payable by the defendant to the plaintiff. That is how the plaintiff landlady is before this Court.

5. The civil revision application having been admitted has now been placed for final hearing before this Court. There are two vital questions of law which arise for determination by this Court. One is with regard to whether section 12 (3) (a) or whether section 12 (3)(b) of the Rent Act would be applicable to the facts of the case and another is with regard to the standard rent of the suit premises. In my opinion, although the learned advocates have taken this Court to the evidence adduced by the parties before the trial Court, this matter shall have to be viewed from the notice correspondence between the parties and the consent terms which have been placed on record.

6. The consent terms exh. 25 were entered into between the parties on 24/2/1975 in Regular Civil Suit No. 405 of 1972. In the said suit the plaintiff claimed rent at the rate of Rs.6/- p.m. from 1/10/1967 and accordingly prayed for decree for arrears or rent in the sum of Rs.216/- being the rent within period of limitation as also the possession of the suit premises. When the matter came up for hearing before the learned Joint Civil Judge (J.D.) Bharuch, the parties settled the matter as under :-

(1) the defendant shall pay to the plaintiff suit outstanding amount of Rs.192/- and cost of the

suit alongwith advocates' fees within one month from the date of settlement (from 24/2/1975) and if the defendant fails to pay such amount, the plaintiff shall be entitled to recover the said amount by executing the decree. The defendant has deposited Rs.170/- in Rent Petition No. 7 of 1971 and Rs.108/- in the suit, in all Rs.278/-. The plaintiff shall withdraw the said amount from the Court and give set off towards the decretal dues and for that purpose the defendant has to give necessary consent.

In case any amount remains due to the plaintiff from the defendant on account (being taken), the defendant has to pay the same. As the defendant has paid all amount of rent due as stated above and has paid the cost of the suit, relief of possession is not pressed.

Bearing in mind the present dearness, etc. the dispute of standard rent between the parties is settled and monthly rent of this room is fixed at Rs.11/- p.m. which is to be paid from 1/3/1975. Sanitary charges are to be paid over and above the rent as per such charges being paid by other tenants for cleaning the toilet.

7. The learned appellate Judge discussed the question of standard rent at length while dealing with point no. 1 pertaining to standard rent. Considering the decisions which were presented on behalf of the rival parties, the learned appellate Judge fixed standard rent at the rate of Rs.11/- p.m. exclusive of sanitary charges mainly relying upon the aforesaid consent terms exh. 25. In my opinion, both the Courts having rendered concurrent findings with regard to fixation of standard rent at the rate of Rs.11/- p.m. exclusive of sanitary charges, there is no scope for interfering with such a finding. Even otherwise, on a fair and reasonable reading of compromise pursis exh. 25 it can hardly be argued that rent of Rs.11/- p.m. exclusive of sanitary charges is in any manner excessive or that the increase made by the compromise pursis is not warranted by law. It might be noted that the provisions of the Rent Act do speak about permitted increases (see section 8 to 10 of the Rent Act). The relevant clause in the consent terms speak about number of factors having been taken by the parties into consideration for fixation of standard rent at the rate of Rs.11/- p.m. Hence, in the facts and circumstances of the case, the fixation of standard rent by the courts below deserves no disturbance.

8. Next question which would merit consideration is whether section 12 (3)(a) or section 12 (3)(b) of the Rent Act would be applicable. However, before that is done it should be noted that the consent terms exh. 25 speak about settlement of account of arrears of rent and mesne profits to be made between the parties. If that is so, it could hardly be said that the account of arrears of rent and mesne profits was settled between the parties this way or that way in the consent terms themselves. The standard rent at the rate of Rs.11/- p.m. fixed between the parties was to be recovered from 1/3/1975 and prior to that, that is to say from 1/10/1967 to 28/2/1975 the arrears of rent and mesne profits were to be settled. The defendant was also to pay the cost of the suit as well as the advocates' fees. The parties settled the outstanding amount under the suit at Rs.192/-, as can be seen from the first clause of the compromise pursis. Thus, the amount which was ascertained between the parties upto 31/8/1972 could be reasonably said to be Rs.192/-. The cost of the suit including the advocates' fees can be seen from the bill of cost appended to the consent terms exh. 25. The said amount is Rs.39.44 ps. This makes a total of Rs.231.44. The rent/mesne profits at the rate of Rs.6/- p.m. from 1/9/1972 to 28/2/1975 for a period of 30 months comes to Rs.180/-. Thus, the total amount comes to Rs.411.44. Out of this amount the plaintiff had to give credit for Rs.278/- as stated in the compromise pursis. The outstanding amount under the consent terms would be Rs.133.44. By notice exh. 46 dated 27/6/1975 the plaintiff demanded cost of the suit at the rate of Rs.54.44 ps. and not at the rate of Rs.39.44. The plaintiff has failed to notice 1/2 Court fee refund amounting to Rs.15/- deducted in the bill of cost. That is the first flaw which appears in the suit notice. The second flaw in the suit notice is with regard to working of the amount due between 1/9/1972 to 28/2/1975. The demand is at the rate of Rs.6.75 ps., 75 paise being the sanitary charges per month. It might be noted that in the consent terms there is no fixed amount of sanitary charges. However, it might be assumed that other tenants might be paying sanitary charges at the rate of 75 paise per month. Thus, the amount of arrears of rent and mesne profits upto 28/2/1975 had been worked out to Rs.202.00 less Rs.31.06 paise, that is to say Rs.170.94 ps. To this plaintiff has added arrears of rent at the rate of Rs.11.75 ps from 1/3/1975 to 30/6/1975. It might be noted that the rent for the month of June 1975 did not fall due on the date of notice, namely 27/6/1975. However, even assuming such a demand to be correct, following questions appear on the face of

the notice :-

- (i) The account as per consent terms exh. 25 remained to be settled between the parties,
- (ii) there was some excess demand, and
- (iii) the dispute with regard to quantum of outstanding amount appeared on the face of the suit notice.

9. It might be noted that on a reasonable construction of the consent terms exh. 25 both the Courts appear to have not properly worked out the amount of arrears of rent and mesne profits as also the cost of the suit which fell due and payable to the plaintiff after giving credit for the amount deposited by the defendant. The appellate Court after lengthy discussion of the consent terms exh. 25 has come to the conclusion that there was no account to be settled between the parties and that the defendant had to be treated as having paid the amount much in advance. A clear error of law appears to have been committed by the learned appellate Judge in construing the consent terms, which upon plain reading thereof would indicate that parties were to settle the account of arrears of rent and mesne profits and the cost of the suit as indicated in the consent terms. Thus, the finding of the learned appellate Judge with regard to the outstanding amount deserves to be quashed and set aside. Likewise the learned trial Judge has accepted the plaintiff's case as has been set out by the plaintiff and has found outstanding amount of Rs.199.75 as due and payable as claimed in the suit. The learned trial Judge has deducted the whole of the amount of cost of Rs.54.44 ps. demanded by the plaintiff while working out dues towards arrears of rent and mesne profits of Rs.199.75 ps. On principle the learned trial Judge is not to be blamed or faulted since the amount of cost cannot be said to be arrears of rent and mesne profits. The account understood between the parties as per consent terms exh. 25 clearly speak about cost of suit including advocates' fees (Vakil fees) to be paid by the defendant to the plaintiff and it was a matter of appropriation by the parties and the plaintiff having appropriated the said amount towards the amount deposited particularly as contemplated by the consent terms, there was no question of the learned trial Judge deducting the amount of Rs.54.44 ps. from the claim. However, Rs.15/- were definitely required to be deducted as the amount was not correctly stated as stated hereinabove. Since there is not much of a dispute with regard to 75 paise per month for sanitary charges even before this Court, now such claim made by the plaintiff deserves to be entertained

and accepted.

10. Likewise both the Courts below have proceeded with the question of possession on the ground of arrears of rent from the stand point of section 12 (3)(a) of the Rent Act. The evidence does indicate tender of rent though for less amount, but the same was in the background of the amount of arrears of rent and mesne profits yet to be settled between the parties. Besides, both the Courts below have failed to notice the fact that the defendant did give reply to the suit notice within one month from the date of receipt of such notice. A copy of the reply appears at exh. 36/1. It is surprisingly how the same was not exhibited when the plaintiff had given reply to this reply as per exh. 71 dated 6/8/1975. Thus, the fact that the defendant had given reply dated 29/7/1975 to the suit notice was admitted. It is inter-alia stated in this reply to reply that the sanitary charges at the rate of 75 paise were being charged from every tenant and, therefore, as per the consent terms the defendant was also liable to pay such amount every month. It further indicates that at the time of settlement wall of the room and the Chokadi were got constructed by the plaintiff. It finally recites that the account stated in the notice was correct and there was no scope for dispute with regard to account or quantum of outstanding amount. This would clearly indicate that the defendant had within one month from the date of the notice disputed quantum of rent, account between the parties with regard to outstanding amount and rent and mesne profits and the standard rent. It is true that the question of standard rent was settled between the parties, but both the courts have raised the issue of standard rent and decided the same. In any event, the case could never have been viewed by either of the Courts under the provisions of section 12 (3)(a) of the Rent Act. This was clearly a case u/S. 12 (3)(b) of the Rent Act, as can be seen from the legitimate working of account of arrears of rent and mesne profits as stated above. Therefore, no decree for eviction could ever have been passed u/S. 12(3)(a) of the Rent Act. The learned appellate Judge has set aside the decree for eviction on apparently erroneous construction of the consent decree as stated above. However, he has also approached the matter from the point of view of section 12 (3)(a) of the Rent Act. The legal and proper approach should have been to view the matter u/S. 12 (3)(b) of the Rent Act. Both the learned advocates for the parties, therefore, submitted that the matter should be remanded to the appellate Court for deciding limited question with regard to whether defendant has rendered himself liable to be

evicted from the suit premises on the ground of arrears of rent and or mesne profits u/S. 12(3)(b) of the Rent Act. It might be noted that the amount of arrears of rent and mesne profits shall be worked out as indicated hereinabove for the purpose of consideration of such question. Following order is, therefore, passed :-

Judgment and order passed by the appellate Court in Regular Civil Appeal No. 109 of 1979 on 29/7/1980 is hereby quashed and set aside. The decree for eviction rendered by the trial Court will also stand set aside, but the question with regard to passing of decree for eviction or dismissing the suit for eviction is left open for the appellate Court being decided while viewing the matter u/S. 12(3)(b) of the Rent Act after hearing both the parties.

The appellate Court will hear the matter and decide the same in accordance with law as indicated hereinabove, as expeditiously as possible, preferably within a period of three months from the date of receipt of writ of this direction.

Office of this Court is directed to immediately return R & P to the appellate Court alongwith writ of this order.

Rule made absolute in the aforesaid directions with no order as to cost.

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